IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE SEVENTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE C.V.RAMULU

WRIT PETITION NO : 5193 of 2002

Between:

Abdul Kathar, S/o. Late Abdul Majeed,
R/o.H.No. 7/55, Machabolarum,
Secunderabad-10.

..... PETITIONER

AND

1 The commandant, Central Industrial Security Force,
O/o. Dy. Inspector General, Nations Industrial Security Academy,
Hakimpet, Hyderabad.
2 The Dy. Inspector General, Central Industrial Security Force,
NISA Post, Hakimpet, Hyderabad.
3 The Inspector General (Hqrs), O/o. Directorate General,
Central Industrial Security Force, Block No. 13.
CGO Complex, Lodhi Road, New Delhi - 03.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue any appropriate Writ, order or direction, preferable Writ in the nature Writ of Certiorari calling for the records pertaining to the proceedings No,. V-11014/54/2001/L&R/93, dt. 9/10-01-2002, issued by respondent No.3 and quash the same by declaring the same as against the principles of natural justice, illegal, arbitrary and unconstitutional.

Counsel for the Petitioner: MR.G.ANANDAM

Counsel for the Respondents: SMT E.URMILA

The Court made the following :

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ORAL ORDER

This writ petition is filed seeking a writ of Certiorari calling for the records pertaining to the Proceedings No.V-1014/54/2001/L&R/93, dated 09/10-01-2002 issued by the 3rd respondent and to quash the same as arbitrary, illegal and violative of Principles of Natural Justice.

It is the case of the petitioner that he was appointed in Central Industrial Security Force on 13-03-1982 and promoted as Head Constable in November, 1997 and has been working in the organization without any complaint. Further, it is the case of the petitioner that he is having 19 years of meritorious service. While so, in December, 1995 he was posted to NISA and assigned the duties of orderly of officers and his duties are cooking food, cleaning utensils, looking after the children, polishing shoes of Officers and his family to whom he was allotted. The post, which he is holding, is called as "Buttman". He was deployed as orderly to Sri P.C.Abraham, Assistant Commandant. While he was discharging his duties at the residence of the said officer, one Mr.C.P.Kundu, Assistant Commandant (fire) also used to utilize his services. While the matter stood thus, on 15.02.2001 as usual he went to the residence of P.C.Abraham at 18.30 hours and when he was about to open the lock of the quarter, he saw the daughter of Sri Kundu and on seeing her, he went to her and asked whether Madam Kundu was there to inform that snakes are found in the area and that the children should be careful about the snakes presence and when the daughter of Kundu informed that her mother was not there, immediately he came back and started working in Sri Abraham's house. After five minutes, Sri Kundu came to the house of Abraham and started abusing the petitioner and later dragged him and taken from the house of K.C.Abraham and put him in the house of Sri Sh.Borkar. When he tried to convince him, he started beating him. He called some officers and gave blows on his face and later he was taken to hospital and managed a certificate from Gandhi Hospital. Thereafter on 19-02-2001 he was issued with the charge-memo for the following charges:

1. *ARTICLE OF CHARGE NO.*1

" That No.822160054 HC/GD A.Abdul Kathar of NISA CISF Hyderabad, on 15-02-2001 at about 18.30 hours while on duty at the residence of Shri P.C.Abraham, Assistant Commandant, Quarter No.11, Type-IV as Security

Aide, was found under the influence of liquor.

2. *ARTICLE OF CHARGE NO.2*

"That No. 822160054 HC/GD A.Abdul Kathar, on 15-02-2001 at about 18.30 hours, unauthorisedly entered in the family quarter No.4, Block-C, Type-IV of Shri C.P.Kundu, Asst.Commandant/Fire, FSTI, NISA, Hyderabad, situated at first floor with a malafide intention in the absence of other family members of Shri C.P.Kundu, AC/Fire.

3. *ARTICLE OF CHARGE NO.3*

" That on 15-02-2001 at 18.30 hours, HC/GD, A.Abdul Kathar entered the family quarter No.14, Block-C, Type-IV of Shri C.P.Kundu, Asst.Commandant/Fire under the influence of liquor and caught hold of Kumar Sonali, aged 10 years(studying in the 5th standard), daughter of Shri C.P.Kundu, AC/Fire and when she managed to free herself and simultaneously started shouting Mummy, Mummy, still he tried to chase her and catch hold of her with a malafide intention."

Later, the petitioner submitted a detailed explanation to the charges. Thereafter, an enquiry was conducted after affording of opportunity of being heard and the disciplinary authority had passed final order on 09/10-01-2002 removing the petitioner from service. Aggrieved by the same, the petitioner preferred an appeal, which was dismissed. Orders of the primary as well as the revisional authorities are challenged in this writ petition.

A detailed counter-affidavit has been filed by the respondents denying the allegations made by the petitioner, inter alia, asserting that the petitioner though completed 19 years of service, had suffered five penalties including reduction to lower stage in the time scale of pay and he was also penalized for drunken behaviour. The department has conducted a detailed enquiry and found the petitioner as an habitual offender and as such he was removed from service. He prays the court to dismiss the writ petition.

On the other hand, the learned counsel for the writ petitioner vehemently contended that charge Nos.1 and 2 are very trivial in nature assuming that they are proved in full. So far as the charge No.3 is concerned, it is grave in

nature and the same was not proved in the domestic enquiry. Only on the basis of charges 1 and 2, the petitioner was dismissed from service. Further, the dismissal of the petitioner from service is disproportionate to that of the misconduct alleged.

Heard the learned counsel on either side. Perused the material available on record.

Admittedly, the petitioner had put in 19 years of service and it is also not denied that the petitioner suffered five minor punishments but in the present case charge Nos.1 and 2, though proved, are trivial in nature and do not call for an ultimate punishment of dismissal from service. The charge No.1 shows that the petitioner was found under the influence of liquor and charge No.2 shows that the petitioner unauthorisedly entered into the family quarter No.4 of one C.P.Kundu, AC/Fire, NISA Hyderabad in the absence of other family members. So far as charge No.3 is concerned, it was not proved. All this would show that the petitioner under the influence of liquor unauthorisedly entered into the family quarter. Except this there is no other allegation made and proved against the petitioner. The petitioner had put in 19 years of service as on the date of his removal from the service. Hence, I am of the considered opinion that since the petitioner had not committed any misconduct earlier, the respondents ought to have taken a lenient view. Even if he was under the influence of liquor at any time earlier and for that also the best course that could have been adopted by the CISF is to retire the petitioner compulsorily, which is also one of the major penalties as per Rule 34 of the Central Industrial Security Force Rules-2001 instead of dismissing the petitioner from service. Hence this Court is of the considered view that though the charges are proved in full, the dismissal from service is a harsh punishment.

Instead of remitting the matter to the disciplinary authority for the purpose of imposing a lesser punishment, I am of the opinion that the matter can be put end at this stage itself. In the facts and circumstances of the case, punishment of compulsory retirement would meet the ends of justice.

Hence, the impugned order dated 09/10-01-2002, removing the petitioner from service, is set aside and modified to the effect that the

petitioner shall retire compulsorily as per Rule 34(iii) of CISF Rules, 2001 and the respondents shall pay all benefits payable in the case of “compulsory retirement”, to the petitioner.

The writ petition is allowed to the extent indicated above. In the circumstances, there shall be no order as to costs.

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C.V.RAMULU,J

7TH APRIL,2005

***TSNR**

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Bilal Nazki, the Acting Chief Justice on this

Thursday the Seventh Day of April Two Thousand and Five.

TO

1 The commandant, Central Industrial Security Force,
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4. Two C.D.Copies.